



## **DELAWARE RIVER BASIN COMMISSION**

### **18 CFR Part 410**

#### **Amendments to the *Water Quality Regulations, Water Code and Comprehensive Plan* to**

#### **Revise the Human Health Water Quality Criteria for PCBs in Zones 2 through 6 of the**

#### **Delaware Estuary and Bay**

**AGENCY:** Delaware River Basin Commission

**ACTION:** Proposed rule; notice of public hearing

**SUMMARY:** The Delaware River Basin Commission (“DRBC” or “Commission”) will hold a public hearing to receive comments on proposed amendments to the Commission’s *Water Quality Regulations, Water Code and Comprehensive Plan* to revise the water quality criteria for polychlorinated biphenyls (“PCBs”) in the Delaware Estuary and Bay, DRBC Water Quality Management Zones 2 through 6, for the protection of human health from carcinogenic effects. The Commission will simultaneously solicit comment on a draft implementation strategy to support achievement of the criteria.

**DATES:** The public hearing will be held starting at 1:00 P.M. on Tuesday, September 10, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Friday, September 20, 2013. More information regarding the procedures for the hearing and comments is provided below.

**ADDRESSES:** The public hearing will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

*Oral testimony and written comments:* Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Friday, September 20. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "PCB Rulemaking" in the subject line.

**FOR FURTHER INFORMATION CONTACT:** The rule text, basis and background document and the draft Implementation Strategy are available on the DRBC website, DRBC.net. A May 10, 2012 PowerPoint presentation that illustrates PCB loading reductions achieved through the implementation of the Commission's PMP Rule is also posted on the website. For further information, please contact Commission Secretary Pamela M. Bush, 609-883-9500 ext. 203.

## SUPPLEMENTARY INFORMATION

*Re-Proposal.* A notice of proposed rulemaking to amend the current PCB criteria and to invite comment on an implementation plan was published in the Federal Register (74 FR 41100) on August 14, 2009. The Commission deferred action on the proposal, however, pending the refinement of implementation strategies for point sources. Today, the uniform criterion of 16 picograms per liter is re-proposed, and a draft implementation strategy that has been revised for point sources is simultaneously published for comment.

*Current Criteria.* The human health water quality criteria for PCBs currently in effect in Zones 2 through 5 of the Delaware Estuary were established by the Commission in 1996 (*see* 61 FR 58047 and incorporation by reference at 18 CFR Part 410). The 1996 criterion applicable to the lower portion of Zone 5 was extended to Zone 6, Delaware Bay, in 2010, effective the following year (*see* 76 FR 16285). The development of these PCB criteria pre-dated the collection of site-specific bioaccumulation data for the Estuary and Bay and site-specific fish-consumption data for Zones 2 through 4 that are relevant to the development of human health water quality criteria. They are also inconsistent with current guidance issued by the U.S. Environmental Protection Agency (“EPA”) for the development of such criteria, and they vary by water quality zone, adding undue complexity to application of the criteria in these tidal waters.

*Development of New Criteria.* By Resolution No. 2003-11 on March 19, 2003 the Commission directed the executive director to initiate rulemaking on a proposal to revise the Commission’s water quality criteria for PCBs for the protection of human health from carcinogenic effects to reflect site-specific data on fish consumption, site-specific

bioaccumulation factors, and current EPA guidance on development of human health criteria. Amendment of the PCB criteria was delayed, however, pending ongoing work by the Commission's Toxics Advisory Committee ("TAC") to develop the new criterion and a simultaneous initiative by the Commission and diverse stakeholders to develop an implementation plan. The TAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers and environmental organizations that advises the Commission on technical matters relating to the control of toxic contaminants in shared waters of the Basin.

Rigorously applying the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current EPA methodology for the development of human health criteria for toxic pollutants (*see* EPA-822-B-00-004, October 2000), the TAC in July 2005 completed development of a revised PCB water quality criterion for the protection of human health from carcinogenic effects for the Delaware Estuary and Bay, recommending adoption of a uniform criterion of 16 picograms per liter for Water Quality Management Zones 2 through 6. By Resolution No. 2005-19 on December 7, 2005, the Commission again directed the executive director to conduct rulemaking, specifically to replace the existing criteria for PCBs with the uniform criterion of 16 picograms per liter.

Over the course of the next three-and-a-half years, the Commission continued to work with co-regulators on an implementation strategy for point and non-point sources to accompany the proposed uniform criterion. A notice of proposed rulemaking to amend the current PCB criteria and to invite comment on an implementation plan was issued in August 2009 (*see* 74 FR 41100). The Commission deferred action on the proposal, however, pending the refinement of

implementation strategies for point sources. The updated, uniform criterion of 16 picograms per liter is now re-proposed, and a draft implementation strategy that has been revised for point sources is simultaneously published for comment.

*Proposed Amendment.* It is proposed to amend Table 6 in Section 3.30 of Article 3 of the *Water Quality Regulations* and *Water Code* as follows: For the parameter “PCBs (Total)”, in the column headed “Freshwater Objectives (ug/l): Fish & Water Ingestion,” by removing the number “0.0000444” and inserting “0.000016”; in the column headed “Freshwater Objectives (ug/l): Fish Ingestion Only,” by removing the number “0.0000448” and inserting “0.000016”; and in the column headed “Marine Objectives (ug/l): Fish Ingestion Only,” by removing the number “0.0000079” and inserting “0.000016”. It is further proposed to amend paragraph 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference that appears there (December 8, 2010), with the date on which the Commission adopts a final rule in response to this proposal.

*Water Quality Impairment for PCBs.* Because high levels of PCBs have resulted in state-issued fish consumption advisories for certain species caught in the Estuary and Bay, these waters are listed by the bordering states as impaired under Section 303(d) of the federal Clean Water Act (“CWA”), and a total maximum daily load (“TMDL”) is required to be established for them. A TMDL expresses the maximum amount of a pollutant that a water body can receive and still attain water quality standards. Once the TMDL is calculated, it is allocated to all sources in the watershed – point and nonpoint. In order to ensure the attainment and maintenance of water quality standards, a source must not discharge a load in excess of its allocated share of the TMDL.

The EPA established TMDLs for PCBs on behalf of the states in December of 2003 for the Delaware Estuary and in December of 2006 for the Delaware Bay (“Stage 1 TMDLs”). Upon adoption of revised human health water quality criteria for PCBs in the Delaware Estuary and Bay, it is anticipated that EPA will establish new TMDLs (“Stage 2 TMDLs”) corresponding to the updated criteria.

*Implementing PCB Load Reductions.* To initiate PCB reductions, by Resolution No. 2005-9 in May 2005, the Commission amended its Water Quality Regulations (“WQR”) to establish a requirement for PCB Pollutant Minimization Plans (“PMPs”) (see Section 4.30.9 of the WQR, incorporated by reference at 18 CFR Part 410) (“the PMP Rule”). In accordance with the PMP Rule the largest point source dischargers of PCBs to the Delaware Estuary and Bay undertook the development and implementation of PMPs, including a variety of track-down and load reduction strategies. Ambient and effluent data collected between 2005 and 2011 show that their efforts over the past 12 years (and in some cases longer) have substantially reduced point source PCB loadings to the Estuary and Bay. However, because PCBs persist in the environment, including in soils that drain to municipal and industrial discharge facilities, most dischargers will require more time, including in some instances decades, to achieve the PCB loading reductions needed to meet their assigned wasteload allocations.

The draft document entitled *Implementation Strategy for Polychlorinated Biphenyls for Zones 2 - 6 of the Delaware River Estuary* (“Implementation Strategy”) builds on the approach embodied by the PMP Rule. Among other things, it attempts to better integrate PMP requirements with the National Pollutant Discharge Elimination System (NPDES) permit

program administered by the Estuary states of Delaware, New Jersey and Pennsylvania pursuant to the CWA.

Notably, the 2003 Delaware Estuary TMDL report projected that “due to the scope and complexity of the problem that has been defined through these TMDLs, achieving the estuary water quality standards for PCBs will take decades.” (EPA 2003, Executive Summary, p. xiii). Adoption of an updated, uniform criterion for the Delaware Estuary and Bay and implementation of the criterion by means of the proposed strategy will not alter this prognosis. However, the proposed criterion and Implementation Strategy are intended to align the Commission’s water quality criteria with current science and to ensure that increasingly protective pollutant levels in fish and ambient water are achieved at an aggressive pace until the protected use – fishable waters – is restored.

*Subjects on Which Comment is Expressly Solicited.* Public comment is solicited on all aspects of the proposed rule. These include but are not limited to the assumptions applied in developing the criterion as set forth in a basis and background document that is available on the DRBC website, DRBC.net. Comment on the proposed Implementation Strategy for the new criterion, also posted on the website, is simultaneously requested.

Dated: July 30, 2013

PAMELA M. BUSH, ESQ.

Commission Secretary

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